

## **Indian Child Welfare Act "ICWA"**

Nuts & Bolts

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## **Contact Information**

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## **Applicability**

- Proceedings
  - Dependency
  - Delinquency
  - Adoptions
  - Guardianships
- Indian child defined
  - Member or eligible for membership
- Tribal determination is conclusive

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## **Inquiry**

- Whose duty
  - Affirmative and continuing duty of the social worker, probation officer & court to inquire
- What
  - If child may be Indian or have Indian Ancestors
- When
  - Removal or as soon as possible thereafter
- How
  - Petition – 300 or 600
  - JV-130 – *Parental Notification of Indian Status*  
Parents must complete at first appearance

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## **Intervention**

- Right to intervene anytime
- Not required to be in writing or on pleading paper
- If the tribe does not intervene, ICWA still applies

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## **Right to Counsel**

- Indian Custodian or Indian Guardian
- Tribe
  - Attorney at their own expense *or*
  - Any other agent designated by the tribe

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## Notice

- When
  - Dependency: Before the detention hearing
  - Delinquency: Before the disposition hearing
- Whose duty
  - Social worker, probation officer, or the court

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## Notice

- How
  - Registered or certified mail with return receipt; recommend first class mail also
    - Return receipt must be filed in court file
    - Use form JV-135 *Notice of Involuntary Child Custody Proceedings for an Indian Child*
  - If tribe intervenes, may send notice as to all other parties

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## Notice

- To whom
  - To tribal chairman or other designated agent for service
    - California DSS Web page:  
[www.childsworld.ca.gov](http://www.childsworld.ca.gov)
  - To all tribes of which the child may be a member or eligible for membership

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## Notice

- How long
  - For every hearing, if reason to believe child may be an Indian child until determined not to be
  - After no less than 60 days, if no determinative response is received, court may determine that ICWA does not apply unless further evidence received

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## Notice

- Timeline
  - Must allow 10 days after receipt of notice before the hearing
  - Must allow 20 day continuance if requested

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## Probable Cause that Child Is an Indian Child

- Person with an interest in the child provides information suggesting that the child is Indian
- The residence of the child, parents, or Indian custodian
- Receiving tribal or other Indian-specific services

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## Active Efforts

- Services designed to prevent the breakup of the *Indian family*
- Tribe's social and cultural standards
- When required
  - Foster care placement
  - Termination of parental rights

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## Burden of Proof

- Foster care placement
  - Clear and convincing evidence, including qualified expert witness testimony
- Termination of parental rights
  - Beyond a reasonable doubt, including qualified expert witness testimony

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## Qualified Expert Witness

- Person qualified to address whether continued custody will result in serious emotional or physical damage
  - No further legal definition
  - Relevant expertise required

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## Placement Preferences

- Foster care placements
  1. Member of the Indian child's extended family
  2. Foster home licensed or approved by the Indian child's tribe
  3. Certified Indian foster home licensed by state or county
  4. Children's institution approved by the tribe or operated by an Indian organization offering a program designed to meet the Indian child's needs

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## Placement Preferences

- Adoptive placements
  1. Member of the Indian child's extended family
  2. Other members of the Indian child's tribe
  3. Other Indian families

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## Placement Preferences

- Court must follow preferences unless there is good cause not to
- Standards for complying are the prevailing social and cultural standards of the tribe
- Tribe may provide different preferences by resolution

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**Good Cause to Deviate  
from Preferences**

- Parent, Indian custodian, or Indian Guardian asks
- Indian child asks
- Child's extraordinary needs established by testimony of qualified expert witness
- No suitable families found after diligent search

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**Rights of Intervenor Tribe**

- To examine all court documents
- To sit at counsel table
- To direct and cross-examine witnesses

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**Full Faith & Credit**

- For all acts, records, and judicial proceedings of any tribe

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## Adoption

- Adopted Indian person has right to learn of all information necessary to protect rights flowing from person's relationship with the tribe
- For voluntary adoptions use forms
  - ADOPT-266 *Notice of Voluntary Adoption Proceedings for an Indian Child* and
  - ADOPT-225 *Parent of Indian Child Agrees to End Parental Rights*

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## Jurisdiction & Transfer

- Exclusive Jurisdiction
  - Washoe Tribe of California and Nevada
  - Out-of-state tribes

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## Jurisdiction & Transfer

- Concurrent Jurisdiction
  - If no exclusive jurisdiction, tribe, parent, or Indian custodian may petition to transfer case
  - The court must transfer unless there is good cause not to
    - Either parent says no
    - Tribe declines
  - If no transfer, proceed in state court and apply ICWA

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## **Invalidate Proceedings**

- Tribe, child, parent, or Indian custodian can petition to invalidate proceedings for violations of ICWA
- Note: Remember, tribe can intervene at any time

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## **Invalidate Proceedings**

- Violations
  - Jurisdiction
  - Notice
  - Appointed counsel
  - Examination of reports
  - Active efforts
  - Foster care placement standards
  - Termination of parental rights standards
  - Voluntary termination standards

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## **Question & Answer Period**

- Any questions?

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